

REMARKS

Claims 1-13 remain in the application.

The Examiner has rejected claims 1-5 and 7-8 under 35 USC §103(a) as being unpatentable over Applicant's admitted prior art in combination with Drewett et al. Applicant respectfully traverses the Examiner on this ground of rejection.

The instant invention is directed to a smoking article which comprises a double wrap of wrapping paper wherein the inner wrap is comprised of from 55 to 85% by weight of wood fibers and from 15 to 45% by weight of flax. This unique inner wrap in combination with an outer wrap of cellulosic fiber material improves the taste quality of a smoking article and simultaneously reduces spotting or staining. As pointed out in the instant application, double-wrap cigarettes using conventional wrapping papers, which are made up of flax or wood or a combination thereof, have been used on cigarette products. However, as further pointed out on page 4 of the instant application, the taste has been negatively affected by these types of wrappers by an increase of irritation, dryness and over-all paper character. Moreover, the smoke chemistry has

been found to be changed by substantially increase in main stream vapor phase smoke components. Thus, Applicant urges that one skilled in the art would be surprised to find that a double-wrap smoking article could be prepared by a unique combination of flax and wood fibers which would provide good taste and simultaneously reduce spotting or staining of the wrap. This unique double wrap smoking article was found to include an inner wrap comprising from 55 to 85% by weight of wood fibers and from 15 to 45% by weight of flax. In the instant application a number of examples are given to demonstrate the uniqueness of this particular combination of wood and flax fibers in an inner wrap of a double-wrap smoking article. In the examples identified as examples 1-7 in the instant application the fiber formula for the inner wrap of double-wrapped cigarettes showed that different compositions of abaca, wood and flax showed a strong negative correlation in the smoke quality, but for examples utilizing an inner wrap which falls within the prescribed range of wood and flax, there was little to no irritation and the smoke quality was rated as very good or excellent.

The Examiner cites the Drewett et al reference as teaching

that cigarette wrappers made of wood and textile fibers mixed in various proportions can be widely varied to confer on the cigarette different characteristics, such as smolder rates, air permeability, ash quality, appearance and taste.

As pointed out in the instant application, and noted by the Examiner, double-wrap cigarettes utilizing wood and flax fibers or textile fibers have been used in various combinations. However, the appearance and taste of these products has been negatively affected with an increase in irritation, dryness and overall papery character. Thus, one would not expect that it would be possible to formulate a wrap with a combination of wood and flax that would overcome this negative appearance and taste. To the Applicant's surprise, with a very specific ratio of wood to flax fibers for an inner wrap for a double-wrap smoking article, these previously encountered problems of double-wrap cigarettes were alleviated. Therefore, just having knowledge that cigarettes may be prepared with wood and flax fibers does not teach nor remotely suggest that a very unique ratio of wood to flax would provide a cigarette wrapper with increased taste, decreased irritation and reduced staining or spotting.

In the instant Office Action, the Examiner has

misrepresented the instant invention as being directed to a cigarette wrapper which is to obtain "....cigarette optimum cigarette characteristics as it relate to parameters such as permeability and ash quality". The instant invention is not directed to cigarette optimum characteristics of permeability and ash quality, but is directed to improved taste and reduction of spotting, characteristics of a cigarette, as such, is not known from the prior art. Moreover, this would not be expected in view of the fact that the prior art teachings of the use of flax and wood fibers in a cigarette wrapper did not provide good taste quality. The Examiner has cited the case of *In re Aller* in the holding that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation".

Applicant submits that the general conditions of the claim are not disclosed in the prior art. The prior art may teach flax and wood fibers in a cigarette wrapper, but a composition including these wrappers exhibits a number of problems to which the instant invention, surprisingly, have been found to overcome. Thus, Applicant is not working with general conditions to discover the optimum or workable ranges by routine experimentation but has found unique characteristics that is not

expected by the general conditions of the prior art; that is, good taste and reduction in spotting.

As pointed out in the previous amendment in the case of *In re Geiger*, 815 Fed.2d 686, 2 USPQ 2d 1276, 178 it was held that "obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination". As discussed previously, the admitted prior art in the instant application and the Drewett et al reference are not related to the teaching of the problem to which the instant invention is directed or solves. Specifically, the admission of the prior art is to note that there is a problem that exists with the use of flax and wood fibers in the creation of bad taste and irritation to a smoker whereas the instant invention solves this problem. Moreover, in a previous amendment it was noted that in *Ex parte Skinner* 2 USPQ 2d 1788, 1790 (B.P.A.I. 1987) it was held that when the incentive to combine the teachings of the references is not readily apparent, it is the duty of the Examiner to explain why the combination of the reference teachings is proper. In the instant situation the Examiner has suggested that the combination of references is to teach

cigarette optimum characteristics for permeability and ash quality. As noted previously, this is incorrect as the instant invention is directed to the improvement of taste and the decrease of spotting of the wrapping paper. The Examiner has overlooked this problem to which the instant invention is directed to solving or at least improving. Thus, Applicant urges that the Examiner has not met the duty as to why the teachings of the references are combined to allegedly teach the instant invention.

Therefore, Applicant urges that the instant invention is not taught by the combination of the statements made in the instant application in combination with Drewett et al and respectfully requests that the Examiner withdraw this rejection.

The Examiner has rejected claims 6 and 9 under 35 USC §103(a) as being unpatentable over Applicant's admitted prior art in combination with Drewett et al and Schneider et al. Applicant respectfully traverses the Examiner on this ground of rejection.

Claims 6 and 10 are dependent claims of independent claims 1 and 7 specifically claiming that the flax is selected from the

group consisting of bast flax fibers and shive bast fibers.

The Schneider et al reference is cited as allegedly teaching a cigarette wrapping paper which may have from 20 to 50% by weight of bast fibers. Schneider et al does not teach nor remotely suggest the correction of the deficiencies in the combination of the teachings of the prior art disclosed in the instant application with Drewett et al in teaching the instant claimed invention as set forth in independent claims 1 and 7. Nowhere does Schneider et al teach or remotely suggest a wrapper for a cigarette which includes an inner wrap for reducing spotting or staining of the smoking article during storage or transportation much less an inner wrap having a very specific combination of wood fibers and flax fibers. Thus, Applicant urges that claims 6 and 10 are not taught by the suggested combination by the Examiner and respectfully requests that the Examiner withdraw this rejection.

The Examiner has rejected claims 1-5 under 35 USC §103(a) as being unpatentable over Kopsch et al in combination with Hampol, Jr. and Drewett et al. Applicant respectfully traverses the Examiner on this ground of rejection.

As pointed out previously, the instant invention is directed to a smoking article having improved taste quality while simultaneously reducing spotting or staining. This improved taste quality while simultaneously reducing spotting or staining of the outer wrap of the double-wrap smoking article is accomplished by the incorporation of a very specific combination of fibers of an inner wrap of material which circumscribes a tobacco rod. The specific range of wood fibers is from 55 to 85% by weight of the inner wrap and the flax is from 15 to 45% by weight of the inner wrap.

Kopsch et al teaches a smoking article which may be wrapped with two layers of papers wherein the inner wrap is of a highly porous Coresta paper which can be made mainly or entirely of suitable wood pulp. Kopsch et al does not teach nor remotely suggest an inner wrap that comprises a mixture of wood fibers with flax and particularly the very specific composition of 55 to 85% wood fibers and 15 to 45% flax. This unique inner wrap composition provides for a double-wrapped smoking article which has little to no irritation, good taste and a reduction of spotting or staining of the cigarette wrapper which is presently known. Specifically, as pointed out in the examples of the

instant application at various ratios of wood, flax and/or abaca fibers which are outside of the claimed ratio of wood fibers to flax, the smoking articles have been found to have poor taste quality. Moreover, the Examiner has again misrepresented the problem to which the instant invention is directed. That is, the Examiner continues to suggest that the instant invention is directed to the construction of a wrapping paper having high permeability whereas the instant invention is directed to providing a wrapping paper of a very unique combination of wood and flax which provides a wrapping paper for a smoking article which provides good taste, reduction of smoke irritation by the smoker as well as an acceptable appearance by reduction of staining. The teachings of making a highly permeable inner wrapper standing alone does not solve the problem to which the instant invention is directed. Thus, the teaching of making a higher permeability paper as taught by Kopsch et al in combination with a reference that teaches controlling the permeability of a wrapper paper for smoking articles, such as Hampl, Jr., is an inappropriate combination for teaching the instant invention, even if the invention was taught from this combination. And, even further, the combination with Drewett et al which teaches a wrapper for making a smoking article made

from wood fibers and not the combination of wood with flax, would also not teach the instant claimed invention. None of these references are remotely related to solving the problem to which the instant invention is directed and therefore the combination suggested by the Examiner as to the teachings of these references is inappropriate. None of these references are remotely related to solving the problem of a smoking article which is made up of a double-wrap of wrapping paper with an inner wrap of a very specific range of flax fibers and wood fibers which reduces spotting and staining during storage and/or transportation and still provides a good taste with reduced irritation. As noted previously, in the case of *In Ex Parte Skinner*, the Court held that it was the duty of the Examiner to explain why the combination of reference teachings is proper and in the instant situation, the Examiner has inappropriately combined the teachings of Kopsch et al, Hampl, Jr. and Drewett et al references reasoning that all of these references relate to improving the permeability of a wrapping paper. However, the instant invention is directed to providing a smoking article with good taste and reduction of spotting. Thus, Applicant urges that the instant claimed invention is not taught nor remotely suggested by the combination of references suggested by

the Examiner and respectfully requests that the Examiner withdraw the rejection.

The Examiner has rejected claims 6 and 10 under 35 USC §103(a) as being unpatentable over Kopsch et al in combination with Hampl, Jr. and Drewett et al and further in combination with Schneider et al. Applicant respectfully traverses the Examiner on this ground of rejection.

Claims 6 and 10 are dependent claims of independent claims 1 and 7 claiming that the flax is selected from the group consisting of a specific combination of bast flax fibers and shive flax fibers.

The Schneider et al reference is cited as allegedly teaching a cigarette paper which includes, as a filler in the paper, from 20 to 50% by weight of bast fibers. However, this reference does not teach nor remotely suggest the correction of the deficiencies in the combination of Kopsch et al with Hampl, Jr. and Drewett et al in teaching a wrapper for a cigarette which includes an inner wrap for reducing spotting or staining of the smoking article during storage or transportation and simultaneously provides for good taste. Thus, Applicant urges

that claims 6 and 10 are not taught by the suggested combination and therefore respectfully requests that the Examiner withdraw this rejection of claims 6 and 10.

The Examiner has rejected claims 7 and 11-13 under 35 USC §103(a) as being unpatentable over Counts et al in combination with Ross and Hampl, Jr.

Claim 7 of the instant application is directed to an inner wrap for a smoking article which comprises from 55 to 85% by weight of wood fibers and from 15 to 45% by weight of flax fibers. Dependent claims 11-13 are directed to the basic weight of the inner wrap as being from 12 to 15 gm/M² and a porosity of from about 200 to 160,000 Coresta units.

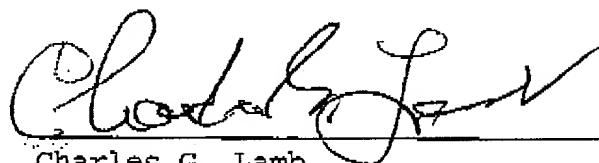
Counts et al teaches a porous plug wrap which is made from soft wood fibers, abaca fibers or other long fiber pulp and has a high permeability ranging from 20,000 to 35,000 Coresta units. And, the Examiner alleges that the structures are similar if not identical to that of the claimed inner wrap. Applicant submits that the claimed inner wrap includes flax fibers which in the prior art, when combined with wood fibers, attributed to a smoking article with unacceptable taste characteristics. Thus,

the instant cigarette wrapper, which is not a plug wrap, is not remotely similar to the porous plug wrap as taught by Counts et al.

The Ross reference is cited as allegedly teaching that high porosity plug wraps are achieved by incorporating into the plug wrap material fibers that are of different dimensions. And, Hampl, Jr. is cited as allegedly teaching that cigarette filter wrappers are typically made from flax or other cellulosic fibers. However, as previously pointed out, the instant invention is specifically directed to an inner wrap, not a plug wrap, with a very specific range of flax fibers to wood fibers, which is not remotely taught nor suggested by this combination. Thus, Applicant urges that the instant invention is not remotely suggested by the combination of Counts et al with Ross and Hampl, Jr. Therefore, Applicant respectfully requests that the Examiner withdraw this rejection.

Applicant urges that the instant application is now in condition for allowance. However, if the Examiner believes there are other unresolved issues in this case, Applicant's attorney of record would appreciate a call at (502) 584-1135 to discuss such remaining issues.

Respectfully submitted,



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